

State of New Hampshire Banking Department

In re the Matter of:) Case No.: 07-140
)
State of New Hampshire Banking) Order to Show Cause
)
Department,)
)
Petitioner,)
)
and)
)
ACT Lending Corporation,)
)
Respondent)
)

NOTICE OF ORDER

This Order commences an adjudicative proceeding under the provisions of RSA 397-A:17, RSA 541-A and BAN 200.

LEGAL AUTHORITY AND JURISDICTION

Pursuant to RSA 397-A:17, the Banking Department of the State of New Hampshire (hereinafter the "Department") has the authority to issue an order to show cause why license revocation penalties for violations of New Hampshire Banking laws should not be imposed.

Pursuant to RSA 397-A:21, the Commissioner has the authority to suspend, revoke or deny any license and to impose administrative penalties of up to \$2,500.00 for each violation of New Hampshire banking law and rules.

NOTICE OF RIGHT TO REQUEST A HEARING

The above named respondent has the right to request a hearing on this Order to Show Cause, as well as the right to be represented by counsel at the Respondent's own expense. All hearings shall comply with RSA 541-A. Any such request for a hearing shall be in writing, and signed by the respondent or the duly authorized agent of the above named respondent, and shall be delivered either by hand or certified mail, return receipt requested, to the

1 Banking Department, State of New Hampshire, 64B Old Suncook Road, Concord, NH
2 03301. Such hearings will be scheduled within 10 days of the request. If the
3 Respondent fails to appear at the hearing after being duly notified, such
4 person shall be deemed in default, and the proceeding may be determined against
5 the Respondent upon consideration of the Order to Show Cause, the allegations
6 of which may be deemed to be true.

7 If the Respondent fails to request a hearing within 30 calendar days of
8 receipt of such order or reach formal settlement with the Department within
9 that time frame, then such person shall likewise be deemed in default, and the
10 orders shall, on the thirty-first day, become permanent, and shall remain in
11 full force and effect until and unless later modified or vacated by the
12 commissioner, for good cause shown.

13 **STATEMENT OF ALLEGATIONS, APPLICABLE LAWS AND REQUEST FOR RELIEF**

14 The Staff Petition dated September 17, 2007 (a copy of which is
15 attached hereto) is incorporated by reference hereto.

16 **ORDER**

17 WHEREAS, finding it necessary and appropriate and in the public
18 interest, and consistent with the intent and purposes of the New Hampshire
19 banking laws, and

20 WHEREAS, finding that the allegations contained in the Staff Petition,
21 if proved true and correct, form the legal basis of the relief requested,

22 It is hereby ORDERED, that the Respondent shall show cause why:

23 1. Administrative penalties of \$5,000.00 should not be imposed;

24 and

25 2. Statutory penalties of \$2,500.00 should not be imposed; and

3. Respondents license should not be revoked; and

It is hereby ORDERED that:

4. Failure to request a hearing within 30 days of the date of

receipt of this Order shall result in a default judgment being

1 rendered, license revocation and administrative penalties
2 imposed upon the defaulting Respondent.

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4 SIGNED,

5 Dated: 9/17/07

6 /s/
PETER C. HILDRETH
7 BANK COMMISSIONER
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6. On July 27, 2007 the Department notified the Respondent that it did not have a surety bond on file as required pursuant to RSA 397-A:5 III (c).

7. To date the Department has not received the required surety bond.

8. Upon information and belief Respondent is currently without bonding by any surety, leaving New Hampshire consumers without recourse should Respondent default in its obligations.

ISSUES OF LAW

II. The staff of the Department, alleges the following issues of law:

1. The Department realleges the above stated facts in paragraphs 1 through 8.

2. The Department has jurisdiction over the licensing and regulation of persons engaged in mortgage banker activities pursuant to NH RSA 397-A:3.

3. RSA 397-A:13 II provides that a licensee shall file its financial statement within 90 days from the date of its fiscal year end. The Respondent violated this provision by failing to submit its financial statement.

4. RSA 397-A:13 IV provides that any mortgage banker which fails to file its financial statement within the time prescribed may be required to pay to the department a penalty of \$25.00 for each calendar day the statement is overdue up to a maximum penalty of \$2,500.00.

5. RSA 397-A:5 III (c) provides that each mortgage banker shall post a continuous surety bond in the amount of \$20,000.00 to the

1 Department. Respondent has violated this statute by failing to
2 post a surety bond.

- 3 6. RSA 397-A:21 IV provides that any person who, either knowingly
4 or negligently, violates any provision of Chapter 397-A, may
5 upon hearing, and in addition to any other penalty provided for
6 by law, be subject to suspension or revocation of their license
7 or an administrative fine not to exceed \$2,500.00, or both.
8 Each of the acts specified shall constitute a separate
9 violation, and such administrative action or fine may be imposed
10 in addition to any criminal penalties or civil liabilities
11 imposed by New Hampshire Banking laws.

12 **RELIEF REQUESTED**

13 III. The staff of the Department requests the Commissioner take the
14 following Action:

- 15 1. Find as fact the allegations contained in section I of this
16 petition;
17 2. Make conclusions of law relative to the allegations contained
18 in section II of the this petition;
19 3. Order Respondent to Show Cause why its license should not be
20 revoked;
21 4. Assess fines and administrative penalties in accordance with
22 RSA 397-A:21, for violations of Chapter 397-A, in the number
23 and amount equal to the violations set forth in section II of
24 this petition; and
25 5. Take such other administrative and legal actions as necessary
for enforcement of the New Hampshire Banking Laws, the

1 protection of New Hampshire citizens, and to provide other
2 equitable relief.

3 RIGHT TO AMEND

4 IV. The Department reserves the right to amend this Staff Petition and
5 to request that the Commissioner take additional administrative
6 action. Nothing herein shall preclude the Department from bringing
7 additional enforcement action under RSA 397-A or the regulations
8 thereunder.

9 Respectfully submitted by:

10
11 /S/
12 James Shepard
Staff Attorney

9/17/07
Date